

Nuclear Suppliers Group and Nuclear-Weapon-Free Zone: A Case for Pakistan

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Introduction

Nuclear Supplier Group was formed in 1975, in response to Indian nuclear test in 1974, with the goal of regulating nuclear exports so as to disallow states to divert nuclear material and technology for making nuclear weapons. With the passage of time, the Group evolved, its members increased and it developed a membership criteria (discussed below). The criteria, inter alia, included the ability of a state to supply items covered by annexes of the NSG Guidelines and full compliance with the obligations as signatory of one or more of the following: The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), or complying with one of the Nuclear-Weapon-Free Zones (NWFZs). Though signing NPT may not be in Pakistan's national interest, the question of NWFZ is worth pondering over. This paper specifically deals with this question: Can Pakistan become part of any of the NWFZs? Does a legal ground exist? This requires not only a perusal of NSG criteria, but also demands a comparative analysis of the Treaty texts and their respective protocols.

The first part of the paper discusses very briefly about NSG and the dominant rationale behind its formation. The second part contains an analysis of the treaty texts and their relevant protocols to determine whether there exists a legal case for Pakistan to become part of any of the NWFZs.

Nuclear Suppliers Group

On May 18, 1974, India became the first state, outside of NPT, to conduct a nuclear detonation by misusing nuclear material and technology that had been transferred to it for peaceful purposes.¹ Ironically describing it as a 'peaceful nuclear explosion,' code-named the 'Smiling Buddha'² which prompted the then leading powers to evolve a mechanism and a set of conditions for nuclear supply and exports. The group of countries, known as the London Club, which would later become the Nuclear Suppliers Group, felt the urgency and the need to ensure nuclear

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cooperation without in any way contributing to nuclear proliferation. In 1976, its seven founding members, the Soviet Union, United Kingdom, France, the Federal Republic of Germany, Japan, and Canada jointly issued the first version of "guidelines on nuclear transfers" which was later accepted by eight new members of the group in September 1978 and was endorsed by IAEA.³

The Nuclear Suppliers Group was formed to promote non-proliferation of nuclear weapons through following commonly agreed guidelines in both nuclear exports and nuclear-related exports. Before that Zangger Committee had existed where major nuclear suppliers evolved a common understanding on how to facilitate nuclear cooperation without undermining nuclear non-proliferation. With the passage of time the NSG guidelines expanded and incorporated the Zangger Trigger List and Zangger Understandings as well, the latter governing the export of nuclear items to non-nuclear-weapon states (NNWS) by establishing three conditions for the supply: 1) Recipient's assurances of non-explosive use, IAEA safeguards, and control on re-transfer.⁴ The NSG guidelines also laid down the condition that states seeking membership should be a party either to NPT or adhere to any of the NWFZs mentioned in the guidelines.

Recently INFCIRC/539/Rev.6 2015 – a revised version of original document of INFCIRC/539 issued in 1997- was published by IAEA comprising the group's origin, role and guidelines for new participants and related articles. It is to be noted that the NSG guidelines are amended with mutual consent of participating governments (PGs).

NSG Membership Criteria

According to the website of Nuclear Threat Initiative⁵ (NTI) and INFCIRC/539/Rev.6⁶, NSG membership criteria include following elements:

- a. The ability of a state to supply items (including items in transit) covered by the annexes to Parts 1 and 2 of the NSG Guidelines;
- b. adherence of a state to the guidelines and action in accordance with them;
- c. enforcement of a legal domestic export control system which gives effect to the commitment to act in accordance with the guidelines;

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- d. full compliance with the obligations of one or more of the following: the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Treaties of Tlatelolco, Rarotonga, Pelindaba, Bangkok, or Semipalatinsk;
- e. and lastly support of international efforts towards nonproliferation of weapons of mass destruction and of their delivery vehicles.

One of the guidelines, namely clause D dealing with compliance either with NPT or one of the NWFZs, which has remained under critical debate internationally, has received insufficient scrutiny in Pakistan. The article is related to full compliance with the obligation of the NPT or any of the mentioned NWFZs and gives choice to a state to comply fully with any one of the options.

While discussing NSG it is pertinent to mention the recent developments relevant to it and take account of the debate they have generated. Due to geo-political and strategic interests of the US, India was granted a country specific waiver by the NSG in 2008 in contravention of its own guidelines. President Bush's administration lobbied to convince key members of the NSG, as it operates with consensus, to allow India a waiver to contract civil nuclear cooperation agreements with other countries of the group. However, India is also now diplomatically engaging NSG members for full membership of the Group while continuing to remain out of NPT.

Pakistan believes that doors for it to become a NSG member will be permanently closed if India acquires a country specific membership on the basis of country specific waiver. As NSG works by consensus Pakistan apprehends that India will never allow it to become a member in future. Furthermore, it will set a bad precedent that will undermine legitimacy of the group.

To avoid violation of NSG guidelines, contravention of the NPT and plugging the gaps between non-NPT States and NSG, Mark Hibbs recently wrote that NSG needs 'a policy governing the participation of candidate states that are not parties to the NPT.'⁷ However, the argument could have been limited to non-NPT Nuclear Weapons States (NWS) like India, Israel, Korea and Pakistan – *de facto* nuclear weapon states.

This would also encourage non-NWS that are even party to NPT to acquire nuclear weapons. Technologically capable states like South Korea and Japan, located in uncertain geostrategic environment and are also members of the NSG, could possibly

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withdraw from NPT and become NWS, having no obligations and safeguards. This would, then, certainly lead towards horizontal nuclear proliferation.

A number of other approaches are being floated to bring states in the fold of NSG, however none of them should be based on country specific approach. Criteria membership should be negotiated and adopted; otherwise fluid nature of international relations will keep adapting to cater for interests of great powers to allow NSG membership. Pakistan too has built its case for NSG membership following India's precedent. Pakistan has achieved a sound nuclear technological base and has offered fuel cycle services, and nuclear related material mentioned in the NSG guidelines, to countries who may want to acquire these. But there are other requirements which Pakistan is yet to meet, which could technically become a hindrance for it to qualify for NSG membership. The most important being that Pakistan has either to become party to NPT or one of NWFZs mentioned in the NSG guidelines.

Most of the debates in Pakistan and abroad have revolved around NPT and NWFZs have attracted scant attention in the context of NSG membership criteria. That taking the initiative of becoming part of one or more NWFZs will better establish Pakistan's credentials to become part of NSG by meeting one of its criteria is evident. The next logical question is, can Pakistan become part of any of the NWFZs? The subsequent portion of the paper will try to find out the answer of this question by going through the concept of NWFZ, its genesis and evolution, different treaties establishing NWFZs, a perusal of the texts of those treaties and their relevant protocols and most importantly to determine where Pakistan fits in all this.

The subsequent part of the paper will focus on NWFZs, the genesis of the concept, evolution and most importantly a comparative analysis of the treaty texts and protocols so as to determine whether Pakistan is eligible to become part of any of the NWFZs.

Nuclear Weapons Free Zone

The history of nuclear-weapons-free zone can be traced back to Rapacki Plan of 1958. The idea arose out of the German Question and was aimed at 'strengthening regional security' by declaring Central Europe a geographical zone free of nuclear weapons. Rapacki was the foreign minister of Poland, who worked against

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deployment of nuclear weapons in Poland, Czechoslovakia, West Germany and East Germany.⁸ Though, the concept of Rapacki did not materialize, but the Latin American states, in 1967, negotiated and adopted the Treaty of Tlatelolco, declaring Latin America and Caribbean a NWFZ. It was one of the first nuclear-weapon-free zones in the world. The initiative on the part of regional states to commit themselves to refrain from either possessing or acquiring nuclear weapons was recognized and reaffirmed by NPT in its Article VII:

Nothing in this Treaty affects the right of any group of states to conclude regional treaties in order to assure total absence of nuclear weapons in their respective territories.⁹

On November 11, 1975, United Nations General Assembly passed and adopted Resolution 3472 B to recognize the commitment of regional states to establish regions/zones free of nuclear weapons and defined NWFZ as:

A nuclear-weapon-free zone shall, as a general rule, be deemed to be any zone, recognized as such by the United Nations General Assembly, which any groups of states, in the free exercise of their sovereignty, have established by virtue of a treaty or convention.¹⁰

The resolution also proposed the delimitation of the zone and a set of verifications and control mechanism, ensured by international system and bodies. Moreover, the resolution also defined the obligations of nuclear weapons states towards NWFZs:

In every case of a nuclear-weapon-free zone that has been recognized as such by the General Assembly, all nuclear weapon states shall undertake or reaffirm in a solemn international instrument having full legally binding force, such as a treaty or convention or protocol, the following obligations.¹¹

The obligations can succinctly be put as: compliance with the Treaty by ensuring total absence of nuclear weapons in the zone/region and refraining from 'use or threatening to use' of nuclear weapons.

On April 30, 1999, the UN Disarmament Commission in its report recommended a set of principles for the establishment of a NWFZ. The guidelines suggested that the initiative for establishing a geographical zone free of nuclear weapons should

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emanate from the 'states within the region' and nuclear-weapon states should be consulted when formulating the relevant protocols to the treaties so as to ensure their consent for 'undertaking legally binding commitments.'¹² Moreover, the NWFZ will allow the states to make use of nuclear energy for peaceful, economic and research purposes.

As of now, there exist five NWFZs. The exclusion of nuclear-weapon-free status of Mongolia (1992) and nuclear-weapon-free geographical regions, that include Antarctic Treaty, Moon Treaty and Seabed Treaty, is deliberate, since they do not concern the given topic. The Treaties involved in the nuclear-weapon-free zones are: 1) Treaty of Tlatelolco-Latin American nuclear-weapon-free zone 2) Treaty of Rarotonga-South Pacific nuclear-free zone Treaty 3) Treaty of Bangkok-Treaty of the Southeast Asia nuclear-weapon-free zone 4) Treaty of Pelindaba- African nuclear-weapon-free zone treaty 5) Treaty on a nuclear-weapon-free zone in Central Asia.

Treaties	No. of States	Protocol Signatories			Opened for Signatures
Latin America (Treaty of Tlatelolco)	33	Protocol 1	Protocol 2		February 14, 1967
		France, Netherlands, United Kingdom of Great Britain and Northern Ireland and United States of America	China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America		
Africa (Treaty of Pelindaba)	50	Protocol 1	Protocol 2	Protocol 3	April 11, 1996
		China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America	China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America	France	
		USA has signed but didn't ratified			
Central Asia (Treaty of Semey / Semipalatinsk)	5	China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America. USA has signed but didn't ratified			September 8, 2006
Southeast Asia (Bangkok Treaty)	10	None			December 15, 1995
South Pacific (Rarotonga Treaty)	13	Protocol 1	Protocol 2	Protocol 3	August 6, 1985
		France, United Kingdom of Great Britain and Northern Ireland and United States of America	China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America		

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Treaties	No. of States	Protocol Signatories		Opened for Signatures
		France, Netherlands, United Kingdom of Great Britain and Northern Ireland and United States of America	China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America	

As can be seen in the table above, most of the Treaties have a set of protocols that oblige outside nuclear powers and states that hold territory in the respective zones, like Spain and France in Africa; Netherlands, France, USA and UK in Latin America, to commit not to undermine NWFZs by deploying nuclear weapons or undermining NWFZ through acts in violation of the treaty. In case of SEANWFZ Treaty none of the internationally recognized nuclear powers has either signed it or verified it because they object to the inclusion of Continental Shelves and Exclusive Economic Zones (EEZs).

It is pertinent to reiterate what has already been alluded to in the afore-mentioned paras that each treaty establishing a NWFZ includes a Protocol for NPT-recognized nuclear weapons states. The set of Protocols is besides the Treaty, which is only binding for the states within the region.

Case for Pakistan

A perusal of the treaty texts along with the respective protocols leads one to the conclusion that Pakistan does not qualify to become part of any of the nuclear-weapon-free zones, with the exception of Treaty of Tlatelolco. It is mainly due to a common article in the protocols to the other treaties that bars membership to non-NPT *de facto* nuclear weapons states.

The article says, “This Protocol shall be open for signature by the People’s Republic of China, the French Republic, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and United States of America.”¹³ This article is common in all the Protocols of the nuclear-weapon-free zones (Treaty of Rarotonga, Protocol 2, Article 4; Treaty of Pelindaba, Protocol 1, Article 4; Treaty of Bangkok, Article 3 of the Protocol; Treaty on a Nuclear-weapon-Free zone in Central Asia, Article 4 of the Protocol), except in the Treaty of Tlatelolco. As non-proliferation initiatives on the part of regional states, NWFZs complemented the non-proliferation bodies and efforts that had existed before them, thus the specific clause that allowed only NPT-

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recognized nuclear powers to become part of NWFZs. All these NWFZs came into being after NPT had been established.

A careful scrutiny of the two sets of Protocols to the Treaties for the Prohibition of Nuclear Weapons in Latin America and Caribbean (Treaty of Taltelolco), makes it amply clear that Protocols do not, in any way specify or even, allude to the condition that only NPT nuclear weapon states can accede to the protocols and become part of the treaty. Rather than limiting the signature of Protocols to respective NPT states, its Article 5 of the Protocol 2 to the Treaty states that, "This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification."¹⁴ By using the word *States* rather than specifically mentioning the names of NPT-recognized nuclear weapons states, the Treaty of the Prohibition of Nuclear Weapons in Latin America and Caribbean provides requisite leeway for non-NPT states to become part of the Treaty. It is mainly due to the fact that Treaty of Tlatelolco was negotiated and adopted prior to the conclusion of NPT and opened for signature on February 14, 1967.¹⁵ The Cuban Missile crisis of 1962 prompted the states in Latin America to take the initiative of declaring the region free of nuclear weapons.

Conclusion

A comparative analysis of the NWFZ treaties and their protocols can lead one to the conclusion that strictly legally speaking, Pakistan can become a part of Treaty of Tlatelolco, committing to its binding principles and guidelines. This conclusion, inferred from a comparative analysis of the treaty texts and their respective protocols, is at best theoretical. Moreover, the legal aspect and Pakistan's prospects of becoming a part NSG should be contrasted with the potential cost and strategic considerations that might fetter Pakistan from joining the Treaty. It is important to mention that the protocol to the Treaty of Tlatelolco would be limited to the specified region, as defined in the Treaty. Thus, even though signing protocol 2 would reinforce Pakistan's claim to non-proliferation regimes, Pakistan would be constrained by its political and strategic interests to become part of the NWFZ of Latin America. As already mentioned, Pakistan is located in a geographical area which has no relevance to the NWFZ of Latin America.

Though there exists a legal case for Pakistan to become a part of Treaty of Tlatelolco, the official position of the government is governed by considerations that weigh in

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favour of maintaining its current position by not adhering to the guidelines of Protocol 2. This policy seems to continue in foreseeable future. Pakistan, given its geographical position and the regional dynamics, is disinclined and averse to taking a unilateral policy decision that might adversely affect its strategic interests, giving it no immediate benefits.

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Endnotes

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- ¹³ Text of the Protocol of Treaty of Rarotonga http://disarmament.un.org/treaties/t/rarotonga_p1/text
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Annex-I

Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean

ADDITIONAL PROTOCOL II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

Article 1

The statute of denuclearization of Latin America in respect or warlike purposes, as defined, delimited and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this instrument is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

Article 2

The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

Article 3

The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

Article 4

The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to this Protocol, as well as the provisions regarding ratification, reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

Article 5

This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.